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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
07/525,943	03/17/90	CHU	1-355

GOLIAN, EXAMINER

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ART UNIT 132 PAPER NUMBER

DATE MAILED: 12/26/90

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS.

☒ This application has been examined ☒ Responsive to communication filed on 12/3/90 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 months, 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-26 are pending in the application.

Of the above, claims 9, 10, 12-18 are withdrawn from consideration.

2. ☐ Claims are pending in the application.

3. ☐ Claims are pending in the application.

4. ☒ Claims 1-8, 11, 19-26 are rejected.

5. ☐ Claims are pending in the application.

6. ☐ Claims are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. ; filed on

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

Applicant's election with traverse of the claims of Group I in Paper No. 3 is acknowledged. The traversal is on the ground(s) that "substantially identical search results may be expected...". This is not found persuasive because the subject matter of the separate groupings are directed to independent and distinct subjects of invention which applicants acknowledge "represent patentably distinct invention." It is thought clear that the subject matter is divergent and the requirements of the different grouping require different search requirements.

The requirement is still deemed proper and is therefore made FINAL.

Claims 9, 10 and 12-18 are withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention or species, the requirement having been traversed in Paper No. 3.

This application contains claims 12-18 drawn to an invention non-elected with traverse in Paper No. 3. A complete response to the final rejection must include cancellation of non-elected claims or other appropriate action (37 C.F.R. § 1.144) M.P.E.P. § 821.01.

Claims 1-8, 11 and 19-26, all the elected claims, are

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rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not seen how the claims define subject matter, patentably distinct each from the other. Claims 1, and 5, and 21 and 22, for example, appear patentably indistinct, each over the other. Claims 19 and 20 are confused. There is not antecedent basis in claim 19 for the recitation of "the edible formulations". The preamble of the claim call for "bulking agents".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-8, 11 and 19-26, all the elected claims are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Hill either per se or in view of the admitted state of the art.

Hill discloses depolymerized plant hydrocolloids ("after at least partial depolymerization and/or hydrolysis") and the use of such depolymerized materials with foods. See, for example, column 9, first complete paragraph. It is considered that the numerical limitations are within the scope of the reference teachings. In any case, to depolymerize to the extent taught by the Barnett et al reference referred to on pages 1-2 of the discloses statement would have only involved the ordinary skill of one in the art.

The specific gum elected is not considered patentably significant. The elected gum is an admittedly old gum and its selection as the gum of Hill would have only involved the ordinary skill of one in the art.

As pointed out above, Hill discloses food relationships for

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his gum and the selection of suitable combination as variously claimed would have only involved the ordinary skill of one in the art.

Features variously recited in the different claims are considered obvious features or control limitations well within the determination of the ordinary worker in the art.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brigand discloses depolymerizing gums and using such gums in a food relationships. Dartey et al disclose hydrocolloids as functionally effective as bulking agents and see specifically column 15, first complete paragraph.

No claim is allowed.

Any inquiry concerning this communication should be directed to Joseph Golian at telephone number (703) 308-0651.

Golian/ad
December 21, 1990
December 26, 1990

JOSEPH GOLIAN
PRIMARY EXAMINER
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